

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Joint Petition of Boston Edison Company,	)	
Cambridge Electric Light Company,	)	
Canal Electric Company and	)	
Commonwealth Electric Company d/b/a	)	D.T.E. 06-40
<u>NSTAR Electric for Approval of Merger</u>	)	

**PETITION TO INTERVENE  
OF THE CAPE LIGHT COMPACT**

Pursuant to 220 CMR §1.03(1), the towns of Aquinnah, Barnstable, Bourne, Brewster, Chatham, Chilmark, Dennis, Edgartown, Eastham, Falmouth, Harwich, Mashpee, Oak Bluffs, Orleans, Provincetown, Sandwich, Tisbury, Truro, West Tisbury, Wellfleet, and Yarmouth, and the counties of Barnstable and Dukes County, acting together as the Cape Light Compact (the "Compact"), hereby respectfully petition the Department of Telecommunications and Energy (the "Department") for leave to intervene in, D.T.E. 06-40. In support of this Petition, the Compact states as follows:

1. The Cape Light Compact is a governmental aggregator under G.L. c. 164, § 134 and consists of the twenty-one towns in Barnstable and Dukes Counties, as listed above, as well as the two counties themselves. It is organized through a formal Inter-Governmental Agreement (the "Compact Intergovernmental Agreement") signed by all of the towns, as well as Barnstable and Dukes counties, pursuant to G.L. c. 40, § 4A. The Compact's Aggregation Plan was approved by the Department in DTE 00-47. The Compact maintains a business office within the Barnstable County offices located at the Superior Courthouse at 3195 Main Street in Barnstable, MA 02630.

2. The purposes of the Compact include, among other things, (1) to negotiate the best rates for the supply and distribution of electricity for consumers on Cape Cod and the Islands; (2) to advance consumer protection and interests for the residents of Cape Cod and the Islands; (3) to improve quality of service and reliability; and (4) to utilize and encourage renewable energy development. Compact Intergovernmental Agreement at Article I. Toward that end, the Compact presently operates a municipal aggregation competitive supply program which provides electric power supply on an opt-out basis to roughly 180,000 customers across all customer classes who are located within the Compact's service territory and would otherwise be served as default service customers. The Department approved the Compact's form of universal service competitive electric supply agreement in D.T.E. 04-32, pursuant to which the Compact has entered into supply agreements with Consolidated Edison *Solutions*, Inc., which now run through January 31, 2007.<sup>1</sup>

3. On June 12, 2006, the Department received a Joint Petition for Approval of Merger (the "Joint Petition") of Boston Edison Company ("Boston Edison"), Cambridge Electric Light Company ("Cambridge"), Canal Electric Company ("Canal") and Commonwealth Electric Company ("Commonwealth" and together with Boston Edison, Cambridge, and Canal, "NSTAR"). The Joint Petition seeks (1) approval, pursuant to G.L. c. 164, § 96, of a proposed merger among and between the aforementioned companies to create a single electric company, NSTAR Electric Company (the "Merger") and (2) confirmation that Boston Edison, to be renamed NSTAR Electric Company, as the surviving corporation after the merger,

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<sup>1</sup> The Compact also operates an Energy Efficiency Plan ("EEP"): Phase I of the EEP was approved by the Department in D.T.E. 00-47C; Phase II of the EEP was approved in D.T.E. 03-39; and Phase III of the EEP was approved in D.T.E. 05-34.

will retain all the franchise rights and obligations that were previously held by Cambridge and Commonwealth.

4. The Merger provides for, among other things: (1) the consolidation of retail rates for default service, the pension adjustment factor and transmission service; (2) the potential consolidation of distribution rates and transition charges on or after January 1, 2010; (3) the reclassification of Cambridge's 13.8 kilovolt ("kV") facilities as distribution facilities with recovery of associated costs transferred from transmission to distribution rates; and (4) implementation of uniform depreciation rates. Joint Petition ¶¶ 9-14.

5. Commonwealth is the local distribution company providing transmission and distribution service to all of the customers within the Compact's member municipalities and providing default service to customers within the Compact's member municipalities who opt out of the Compact's aggregation program.

6. As more specifically alleged below, decisions made by the Department in this proceeding, particularly those affecting Commonwealth, will substantially and specifically affect the Compact, its municipal aggregation program and the interests of residents of Cape Cod and the Islands that the Compact is charged with advancing.

7. Commonwealth's rates and charges are currently different than those of the other NSTAR companies. For example, for the major residential schedules, the current transmission rate for Boston Edison (1.280¢/kWh) is 84.2% higher, and for Cambridge (3.026¢/kWh) is 335.4% higher, than the current transmission rate for Commonwealth Electric (0.695¢/kWh). NStar Electric Summary of Electric Delivery

Service Rates, M.D.T.E. 190.<sup>2</sup> Consolidated transmission rates raise the distinct possibility that customers on Cape Cod and the Islands will be forced to pay a disproportionate share of costs relating to the provision of transmission service to customers in other territories. Consolidation of transmission rates, default service rates, the pension adjustment factor, distribution rates and transition charges across the historic service territories of the NSTAR companies will substantially and specifically affect the Compact in its capacity as both an association of ratepayers and as a representative of municipal, residential and commercial ratepayers on Cape Cod and the Islands.

8. The Compact acknowledges that ratepayers in other NSTAR service territories should have concerns in common with those of ratepayers on Cape Cod and the Islands with respect to the overall level and fairness of rates paid by ratepayers, and that the Attorney General has the obligation to represent the common concerns of all ratepayers in the Commonwealth of Massachusetts in Department proceedings. See, e.g., Petition of Boston Edison Company, D.T.E. 04-61, Hearing Officer Ruling on Petition to Intervene and Amended Petition for Limited Participant Status at 4 (Sept. 30, 2004). However, the Attorney General cannot adequately represent the interests of Commonwealth customers within the Compact service area on these issues because the Attorney General would be seeking to maximize average benefits to ratepayers, not to guard against disproportionate burdens being placed on consumers on Cape Cod and the Islands.<sup>3</sup>

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<sup>2</sup> Available at [http://www.nstaronline.com/ss/customer\\_service/rates/tariffs/190.pdf](http://www.nstaronline.com/ss/customer_service/rates/tariffs/190.pdf).

<sup>3</sup> Moreover, because various elements of the Merger are governed by the settlement agreement approved by the Department in D.T.E. 05-85, see Joint Petition ¶¶ 12-14, and the Attorney General is a party to that settlement agreement, the Attorney General cannot adequately represent the interests of those ratepayers in any NSTAR service territory – much less the interests of Commonwealth’s customers within the Compact service area – who may have different views on (1) the extent to which

9. The failure of the Merger terms to address other issues also substantially and specifically affects the Compact. For example, NSTAR currently reports customer numbers, loads, investments, costs, as well as service quality and reliability, separately for each of its three distribution companies through, for example, periodic filings with the Department and with the Federal Energy Regulatory Commission (“FERC”). These data are invaluable for the Compact as well as other market participants and analysts. The Merger fails to address how to preserve valuable data collection and reporting with respect to regions within the merged service territory.

10. The Merger also fails to address how the merged distribution company will equitably invest in transmission and distribution maintenance and upgrades across the regions within the merged service territory.

11. The Compact’s intervention will not unduly burden NSTAR, the Department or any of the parties that filed or may intervene in this proceeding, in that the Compact will not introduce duplicative or repetitive material and will cooperate in ensuring a timely and efficient proceeding.

#### **STATEMENT OF PETITIONER’S CLAIMS**

12. The Merger cannot be approved unless the Department finds that the Merger and the terms thereof “are consistent with the public interest.” G.L. c. 164, § 96; see also Boston Edison/Commonwealth Energy System Merger, D.T.E. 99-19 (1999) (citing Eastern-Colonial Acquisition, D.T.E. 98-128 (1999), Eastern-Essex Acquisition, D.T.E. 98-27 (1998), and NIPSCO-Bay State Acquisition, D.T.E. 98-31 (1998)). Those cases established a “no net harm” standard for evaluating proposed

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these elements of the Merger are subject to scrutiny in this proceeding and (2) how these elements of the settlement agreement should be implemented.

mergers. Eastern-Colonial Acquisition, D.T.E. 98-128, at 5; NIPSCO-Bay State Acquisition, D.T.E. 98-31, at 9-10. Specifically, the petitioners must show that there is an “avoidance of public harm” or that the “public interest would be at least as well served by approval of a proposal as by its denial.” Boston Edison/Commonwealth Energy System Merger, D.T.E. 99-19, at 10. Stated a different way, to be consistent with the public interest, “[t]he costs or disadvantages of a proposed merger must be accompanied by offsetting benefits that warrant their allowance.” NIPSCO-Bay State Acquisition, D.T.E. 98-31, at 10.<sup>4</sup>

13. If allowed to intervene, the Compact will contend that, based on the currently known terms, the Merger is not consistent with the public interest. Below is a summary of the Compact’s anticipated contentions, based on its review of the filing to date:

14. The Merger is inconsistent with the public interest because the consolidation of rates contemplated by the Merger poses a risk of unfairness to customers within the Commonwealth service territory. NSTAR’s assurances to the contrary are cold comfort. NSTAR asserts that transmission rates for Commonwealth customers will rise only a little more than 1%, NSTAR-CLV-1 at 20 (Testimony of Christine L. Vaughan), but this assertion is suspect because it is based on actual 2005 costs and these costs have been adjusted to exclude congestion costs, id. at n.1. Future transmission costs for NEMA and Boston are likely to be higher than 2005 costs as they are increased to cover the cost of the 345kV Transmission Reliability

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<sup>4</sup> The Department may review the following factors in determining whether a proposed merger is consistent with the public interest: (1) effect on rates; (2) effect on the quality of service; (3) resulting net savings; (4) effect on competition; (5) financial integrity of the post-merger entity; (6) fairness of the distribution of resulting benefits between shareholders and ratepayers; (7) societal costs; (8) effect on economic development; and (9) alternatives to the merger. Mergers and Acquisitions, D.P.U. 93-167-A at 7-9 (1995).

Project, now expected to cost more than \$234 million. ISO New England Regional System Plan 2005 at 87 (Oct. 20, 2005). Nor is it clear that NEMA congestion costs (largely related to generation from Mystic Units 8 and 9) are likely to end anytime soon.<sup>5</sup> See ISO New England Reliability Agreements – Annual Fixed Costs Summary, Agreements Effective or Pending at FERC, Status Updates through Apr. 28, 2006.<sup>6</sup> The Merger should not be approved unless NSTAR presents adequate expert testimony on rate impacts and proposes tariffs that represent an equitable allocation of costs and benefits across existing service territories.

15. The Merger is also inconsistent with the public interest because, without adequate data collection and reporting requirements, the Merger could result in the loss of regional data valuable to the Compact and other market participants. In addition, the terms of the Merger should specifically require NSTAR to provide, among other things, certain data needed by municipalities that have adopted or are considering adopting a municipal aggregation plan.

16. The Merger is also inconsistent with the public interest because the terms of the Merger fail to ensure that the surviving corporation will make adequate and equitable commitments to maintenance and upgrading of the transmission and distribution system across the historic service territories. The Compact particularly objects to the absence of any commitment on the part of the surviving corporation to

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<sup>5</sup> Similarly, while NSTAR asserts that prices for default service supply in the NEMA load zone were only 1.5% to 3.7% higher than prices for default service supply in the SEMA load zone in 2004 and 2005, NSTAR-CLV-1 at 14, these calculations were based on an analysis of energy prices in the real-time market whereas default service supply is procured in forward markets where the differences are much more significant, see, e.g., Electric Restructuring in Massachusetts – Default Service – Monthly Default Service Price (available at <http://www.mass.gov/dte/restruct/competition/defaultservice.htm>). In fact, Boston Edison default service prices have exceeded Commonwealth default service prices by roughly 10%, not the 1% to 4% that NSTAR reports. See *id.*

<sup>6</sup> Available at [www.iso-ne.com/genrtion\\_resrcs/reports/rmr/rmr\\_agreements\\_summary\\_fixed.xls](http://www.iso-ne.com/genrtion_resrcs/reports/rmr/rmr_agreements_summary_fixed.xls).

conduct necessary maintenance and upgrading of the unreliable transmission cables from the mainland to Martha's Vineyard.

17. The Merger is also inconsistent with the public interest because, to the extent that there are indeed decreases in distribution service costs that will result from efficiencies achieved through the Merger, NSTAR shareholders will receive a disproportionate benefit for those cost reductions because the settlement approved in D.T.E. 05-85 established a distribution rate scheme that is effectively independent of changes in costs. See NSTAR CLV-1 at 8 ("The future level of revenues for NSTAR Electric distribution service was resolved by the Settlement Agreement approved by the Department in D.T.E. 05-85."). The Merger should not be approved unless its terms result in a fair distribution of merger benefits between stockholders and customers.

#### **EVIDENCE TO BE PRESENTED**

18. If the petition is granted, the Compact may introduce evidence regarding, among other things, (1) the real impact on customers within the Compact's service territory of consolidation of transmission rates and default service rates, (2) the harm to the Compact and other participants that will result upon approval of a Merger that does not require appropriate collection and reporting of certain valuable regional data; (3) the harm to the consumers on Cape Cod and Martha's Vineyard that will result upon approval of a Merger that does not require fair and appropriate commitments with respect to maintenance and upgrade activities across the historic service territories; and (4) the allocation of merger benefits between NSTAR stockholders and customers.



**PETITIONER'S REQUEST FOR RELIEF**

19. The Compact asks the Department to allow it to intervene and participate fully in these proceedings, in order that its interests as stated above may be fully protected.

For all the above reasons, the Compact respectfully moves that the Department allow this petition to intervene. The Compact hereby notices the appearance of the undersigned counsel.

Respectfully submitted,

THE CAPE LIGHT COMPACT

By its attorneys,



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